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PP v. MUHAMAD SYUKRI ISHAK & ORS

COURT OF APPEAL, PUTRAJAYA
RAVINTHRAN PARAMAGURU JCA
AHMAD ZAIDI IBRAHIM JCA
NOORIN BADARUDDIN J

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[CRIMINAL APPEALS NOS: P-06A-20-11-2023, P-06A-22-11-2023, P-06A-23-11-2023, P-06A-24-11-2023, P-06A-25-11-2023, P-06A-26-11-2023, P-06A-28-11-2023, P-06A-29-11-2023, P-06A-30-11-2023, P-06A-31-11-2023, P-06A-32-11-2023, P-06A-33-11-2023, P-06A-34-11-2023,

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P-06A-35-11-2023, P-06A-36-11-2023, P-06A-37-11-2023, P-06A-39-11-2023, P-06A-40-11-2023, P-06A-41-11-2023, P-06A-42-11-2023, P-06A-43-11-2023, P-06A-44-11-2023, P-06A-45-11-2023, P-06A-46-11-2023 & P-06A-47-11-2023]

12 SEPTEMBER 2024

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Abstract – *Section 402B of the Criminal Procedure Code seeks to provide for a speedy procedure and hence, saves the courts' time as well as the parties involved so as they are not affected by the lengthy and protracted procedures. The section provides that a written statement*

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'shall, subject to the conditions in sub-s. (2), be admissible as evidence to the like extent as oral evidence.' Thus, in certain cases where the evidence of witness could be lengthy because of reference to numerous documents and transactions, much time could be saved if the prosecution avails the procedure in s. 402B. Being procedural in nature, the written

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statement will stand as oral evidence under s. 402B, wherein sub-s. (2) provides for conditions of admission of the witness statement. Once admitted in lieu of oral evidence, falsehoods or hearsay evidence contained in it need not be necessarily accepted as true. Instead, they can be challenged in the same manner that hearsay evidence found in oral

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testimony is challenged.

CRIMINAL PROCEDURE: *Appeal – Revisionary jurisdiction – Appeal against decision of High Court – Whether Court of Appeal has jurisdiction to hear any appeal from High Court made in exercise of revisionary jurisdiction – Whether*

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interlocutory rulings or orders made in course of trial amenable to criminal revisionary jurisdiction of High Court – Whether High Court exercised 'its revisionary jurisdiction' in 'a criminal matter decided by the Sessions Court' – Whether decision of High Court fell within ambit of s. 50(1)(b) of Courts of Judicature Act 1964 – Whether revisionary jurisdiction of High Court can be

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invoked 'at any stage' of the proceedings – Courts of Judicature Act 1964, s. 35 – Criminal Procedure Code, s. 323

CRIMINAL PROCEDURE: *Statements – Witness statements – Admission of witness statement under s. 402B of Criminal Procedure Code ('CPC') – Whether procedural in nature – Whether admission in lieu of oral evidence – Conditions of admission – Whether word 'may' in s. 402B(2) of CPC means statement can be admitted if conditions satisfied and not otherwise – Sessions Court rejected witness statement and ordered witness statement used as 'guide' – Whether Sessions Court has discretion to reject witness statement – Whether ruling that witness statement to be used as 'guide' contravened s. 402B of CPC – Whether High Court erred in affirming Sessions Court's ruling*

The prosecution preferred a charge under s. 16(a)(B) of the Malaysian Anti-Corruption Commission Act 2009 ('MACCA') against 25 employees of the Road Transport Department. The Sessions Court ordered a joint trial of their cases. When the fourth prosecution witness ('SP4') was called to the witness stand, an issue pertaining to his witness statement arose. The prosecution provided a copy of witness statement of 196 pages to all defence counsel, more than 14 days earlier, to comply with s. 402B(2)(c) of the Criminal Procedure Code ('CPC'). The prosecution intended to use the witness statement of SP4 under s. 402B of the CPC in place of his oral examination-in-chief. However, counsel for the respondents raised issues with regard to it. Having considered, amongst others, the objections that the witness statement allegedly contained leading questions and hearsay statements, the Sessions Court directed SP4 to give evidence orally and, at the same time, ordered the witness statement to be used as a 'guide' and the trial proceeded with SP4 giving oral evidence. However, the prosecution subsequently filed an application for revision to the High Court in respect of the decision of the Sessions Court for SP4 to give oral evidence in respect of his evidence-in-chief and for the witness statement to remain on the record merely as a 'guide'. The High Court, acting in its revisionary jurisdiction under s. 323 of the CPC, dismissed the application for revision on its merits and affirmed the rulings made by the Sessions Court. Hence, this appeal by the prosecution.

Held (allowing appeal)

Per Ravinthran Paramaguru JCA delivering the judgment of the court:

(1) Under s. 50(1)(b) of the Courts of Judicature Act 1964 ('CJA'), the Court of Appeal has jurisdiction to hear any appeal from the decision of the High Court made in the exercise of its revisionary jurisdiction in respect of any criminal matter decided in the Sessions Court. In hearing the criminal revision application by the prosecution and deciding that the ruling of the Sessions Court was proper, the High Court obviously exercised 'its revisionary jurisdiction' in 'a criminal matter decided by the Sessions Court'. In the premises, the decision of the High Court fell squarely within the ambit of the above mentioned provision that governs

A the appellate jurisdiction of the Court of Appeal. The prosecution was entitled to file this appeal and the argument that the matter decided by the High Court was not appealable could not be countenanced. (paras 13-15)

B **(2)** Section 323 of the CPC envisages that the regularity of 'any' proceedings can be the subject of a revision application. The word 'any' used in respect of proceedings includes proceedings that have not terminated with a final outcome such as conviction or acquittal. It is also clearly spelt out in s. 35 of the CJA that the revisionary jurisdiction of the High Court can be invoked 'at any stage' of the proceedings and directions can C be given to the subordinate court 'for further conduct' of the proceedings. Section 35 gives additional powers to the High Court in both civil and criminal matters with respect to supervisory and revisionary jurisdiction. The power conferred by s. 35 of the CJA is wider than the power conferred in s. 325 of the CPC. In the premises, D the argument that the interlocutory rulings or orders made in the course of trial were not amenable to the criminal revisionary jurisdiction of the High Court was plainly without any merit. (paras 19 & 20)

(3) The purpose of s. 402B was to ensure speedy procedure in criminal trials. Section 402B(1) provides that a written statement 'shall, subject E to the conditions in sub-s. (2), be admissible as evidence to the like extent as oral evidence'. Subsection (2) starts with the words 'A statement may be tendered in evidence.' The conditions of admission of a witness statement stated in sub-s. (2) of s. 402B of the CPC are: (i) the witness must sign the statement; (ii) the statement must contain F a declaration that the contents are true to the best of his knowledge and belief; and (iii) a copy of the witness statement must be served on parties to the proceedings 14 days before the trial unless otherwise agreed. The word 'may' in sub-s. (2) only means that a statement can be admitted if it satisfies the three conditions and not otherwise. As the conditions of G admission were not an issue in this case, the Sessions Court did not have any discretion to reject the witness statement of SP4. The ruling of the Sessions Court that the witness statement could be used as a 'guide' contravened s. 402B and caused serious irregularity in the conduct of the trial. (paras 22-25)

H **(4)** Section 402B of the CPC is procedural in nature. The written statement will stand as oral evidence under s. 402B. Once admitted *in lieu* of oral evidence, very much like when a witness gives oral testimony, falsehoods or hearsay evidence that is contained in it need not be necessarily accepted as true. Hence, the Sessions Court should have I merely recorded the objection of counsel on leading questions and hearsay evidence and the objections should have been treated as a

reservation of his client's right to cross-examine and challenge the witness on hearsay evidence in question and leading questions, if any. The witness statement should have been admitted as oral evidence as the conditions of admission were satisfied and should not have been ordered to be used as a 'guide' as there is no provision for such a use in s. 402B. The High Court fell into error by ruling that the Sessions Court had a discretion to reject the witness statement despite the fact that the prosecution complied with conditions for admission under s. 402B(2) of the CPC and by maintaining the ruling of the Sessions Court that the witness statement be used as a 'guide'. (paras 26-28)

(5) The court, in allowing the appeal, gave directions to the Sessions Court with respect to the further conduct of the trial in accordance with the power granted under s. 35(1) of the CJA: (i) that SP4 was allowed to sign the witness statement upon taking the witness stand; (ii) that the witness statement to be admitted as oral examination-in-chief of the prosecution under s. 402B and the oral evidence already recorded to stand as additional oral evidence; and (iii) counsel for the respondents to have full liberty to examine the witness on all issues pertaining to hearsay evidence and leading questions (if any) contained in the witness statement. (para 29)

Case(s) referred to:
Liaw Kwai Wah & Anor v. PP [1987] 1 CLJ 35; [1987] CLJ (Rep) 163 SC ***(refd)***
Manokaran & Anor v. PP [1978] CLJU 118; [1978] 1 LNS 118 HC ***(refd)***
Rossarin Nuekaew v. PP [2017] 8 CLJ 503 FC ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, ss. 31, 35(1), 50(1)(b)
Criminal Procedure Code, ss. 323, 325, 402B(1), (2)(c), (6)
Malaysian Anti-Corruption Commission Act 2009, s. 16(a)(B)

For the appellant - Wan Shaharuddin Wan Ladin, Julaila Jamaludin, Maziah Mohaide, & Nurul Atiqah Mohamad Alias; DPPs

(Criminal Appeals Nos: P-06A-20-11-2023 & P-06A-40-11-2023)
For the respondents - Ang Chun Pun, Ch'ng Gin Yee; M/s CP Ang & Co

(Criminal Appeals Nos: P-06A-22-11-2023, P-06A-23-11-2023, P-06A-24-11-2023, P-06A-25-11-2023, P-06A-26-11-2023, P-06A-28-11-2023, P-06A-29-11-2023, P-06A-30-11-2023, P-06A-32-11-2023, P-06A-33-11-2023, P-06A-34-11-2023, P-06A-35-11-2023, P-06A-36-11-2023, P-06A-37-11-2023, P-06A-39-11-2023, P-06A-41-11-2023, P-06A-44-11-2023 & P-06A-46-11-2023)
For the respondents - Amrick Singh Sandu & Muhammad Zulzarif Mohd Zakuan; M/s Naran Singh & Co

(Criminal Appeal No: P-06A-31-11-2023)
For the respondent - Ashok Athimulan, Fiona Aurelia Culas, V Muniandy & S Gowri; M/s Athimulan & Co

(Criminal Appeals Nos: P-06A-42-11-2023, P-06A-43-11-2023, P-06A-45-11-2023 & P-06A-47-11-2023)

For the respondents - Nazmi Mohd Asrar & Hafiz Zainol Abidin; M/s Hafiz Zabir & Rezal

[Editor's Note: For the High Court judgment, please see PP lwn. Muhammad Syukri Ishak & Yang Lain [2024] 4 CLJ 156 (overruled).]

Reported by S Barathi

JUDGMENT

Ravinthran N Paramaguru JCA:

Introduction

[1] These appeals have come to us from the High Court that heard a criminal application in the exercise of its revisionary jurisdiction under s. 323 of the Criminal Procedure Code (CPC). The criminal application was filed by the Public Prosecutor to revise a ruling made by the Sessions Court in the course of a criminal trial. Aggrieved by the decision of the High Court to dismiss the application, the Public Prosecutor has filed this appeal.

Background Facts

[2] The brief background facts may be stated as follows. The prosecution preferred a charge under s. 16(a)(B) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) against 25 employees of the Road Transport Department based in Penang. The Sessions Court ordered a joint trial of their cases.

[3] When the fourth prosecution witness (SP4) was called to the witness stand, an issue pertaining to his witness statement arose. The prosecution had provided a copy of the lengthy witness statement of 196 pages to all defence counsel more than 14 days earlier to comply with s. 402B(2)(c) of the CPC. The prosecution intended to use the witness statement of SP4 under s. 402B of the CPC in place of his oral examination-in-chief. However, some of the counsel for the respondents raised some issues with regard to it. It must be noted that at this stage, the witness statement had not been signed by the SP4 as yet in view of the objections raised.

[4] Mr CP Ang applied for the entire witness statement to be read in court aloud and not merely let the record reflect that it was read. In our view, nothing much needs to be said about this request. The Federal Court in *Rossarin Nuekaew v. Public Prosecutor* [2017] 8 CLJ 503 authoritatively ruled that witness statements need not be read out aloud. The purpose of insertion of s. 402B into the CPC is to ensure a speedy trial and the utility of the witness statement would be lost if a long witness statement is read aloud in its entirety. Under s.402B(6) of the CPC, only portions of the statement that are directed by the court to be read aloud need to be read by the witness.

[5] However, the Sessions Court gave serious consideration to the objection raised by Mr Ashok Athimulan. He objected to the contents of the witness statement as it allegedly contained leading questions and hearsay statements. We say "allegedly" as the witness statement is not in the record of appeal for our perusal. However, the Deputy Public Prosecutor (DPP) has informed us that the witness statement is in the form of a narrative and not in question-and-answer format. For this reason, we fail to see the point on leading questions if such is the case. But we leave that to the trial court's consideration.

[6] After considering the objection of Mr Ashok Athimulan, the Sessions Court directed SP4 to give evidence orally. At the same time, he ordered the witness statement to be used as a "guide". In the original language, the Sessions Court said that "Penyata saksi boleh dirujuk sebagai panduan".

[7] The trial then proceeded with SP4 giving oral evidence for about an hour during which we are told that 153 questions were asked of him. However, when the court resumed after lunch, the DPP asked for an adjournment to consider some issues. The DPP had also, by then, referred the matter to his head office. By the time of the adjourned trial date of 5 January 2023, the prosecution filed an application for revision to the High Court in respect of the decision of the Sessions Court to order SP4 to give oral evidence in respect of his evidence-in-chief and for the witness statement to remain on the record merely as a "guide".

[8] It appears that at the outset of the arguments before the High Court, Mr CP Ang submitted that the decision of the Sessions Court is not amenable to revision under s. 323 of the CPC. Learned DPP agreed that such a position was taken by Mr CP Ang.

[9] Nonetheless, the learned Judicial Commissioner proceeded to consider the revision application on its merits and did not dismiss it outright on the ground submitted by Mr CP Ang that the matter is not amenable to revision. The preliminary point of Mr CP Ang is not mentioned in the judgment of the learned Judicial Commissioner. However, since Her Ladyship proceeded to address the merits of the revision application, we take it that she had decided to overrule Mr CP Ang's preliminary point and exercise her revisionary jurisdiction to hear the complaint of the Public Prosecutor.

[10] The decision of the learned Judicial Commissioner was that there was nothing wrong with the decision of the Sessions Court to refuse admission of the witness statement and to order SP4 to give oral evidence with respect to the examination-in-chief and for the witness statement to be used merely as a "guide".

A **Issues**

[11] Before us, the DPP submitted that the prosecution's right was disposed of finally as the High Court dismissed the revision application. Therefore, he may appeal against the decision of the High Court. Secondly, he submitted that the ruling of the Sessions Court was erroneous and not in conformity with s. 402B of the CPC and is therefore subject to the revisionary jurisdiction under s. 323 of the CPC and that the High Court erred in not revising it.

[12] Mr CP Ang raised the same preliminary point that he raised in the High Court, *ie*, that the ruling of the Sessions Court with respect to s. 402B should not have been the subject of revision under s. 323 of the CPC. He said it was an interlocutory order in the course of trial and the prosecution could have filed an appeal at the conclusion of the case. Mr Amrick Singh Sandhu repeated the objection of Mr Ashok Athimulan before the Sessions Court that the witness statement contained leading questions and hearsay evidence and that there was *mala fide* on the part of the prosecution as SP4 was examined orally for an hour or so by learned DPP. On the other hand, Mr Ashok Athimulan candidly pointed out that he did not object to the witness statement at the Sessions Court on the ground that conditions of admission were not met under s. 402B(2) of the CPC. He only objected to the contents because of the leading questions and the hearsay evidence contained in it.

Appealability Of Decision

[13] We observed that counsel for the respondents questioned the appealability of the decision of the High Court. In our view, there is plainly no merit in it. The High Court acted in its revisionary jurisdiction. It dismissed the application for revision on its merits and affirmed the rulings made by the Sessions Court. The High Court gave full reasons for its decision. Under s. 50(1)(b) of the Courts of Judicature Act 1964 (CJA), the Court of Appeal has jurisdiction to hear any appeal from the decision of the High Court made in the exercise of its revisionary jurisdiction in respect of any criminal matter decided in the Sessions Court. For ease of reference, we reproduce it below:

> Part III THE COURT OF APPEAL
>
> Chapter Appellate Jurisdiction – Criminal Appeals
>
> 50. Jurisdiction to hear and determine criminal appeals
>
> (1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the *Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court* -
>
> (a) in the exercise of its original jurisdiction; and
>
> (b) *in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.*
>
> (emphasis added)

[14] The prosecution requested for the ruling made by the Sessions Court in respect of the s. 402B witness statement to be revised by the High Court under s. 323 of the CPC. In hearing the criminal revision application and deciding that the ruling of the Session Court was proper, the High Court obviously exercised "its revisionary jurisdiction" in "a criminal matter decided by the Sessions Court". In the premises, the decision of the High Court squarely falls within the ambit of the abovementioned provision that governs the appellate jurisdiction of the Court of Appeal.

[15] In the premises, the prosecution is entitled to file this appeal and the argument that the matter decided by the High Court is not appealable cannot be countenanced.

Criminal Revisionary Jurisdiction

[16] The criminal revisionary jurisdiction of the High Court to supervise the subordinate courts is housed in a number of statutory provisions. Section 31 of the CJA says that the High Court can exercise criminal revisionary power in accordance with the law relating to criminal procedure. Section 323 of the CPC that governs criminal procedure reads as follows:

> (1) A Judge may call for and examine the record of any proceeding before any subordinate Criminal Court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate Court.
>
> (2) Orders made under sections 97 and 98 are not proceedings within the meaning of this section.

[17] Section 323 read with s. 325 of the CPC confers broad powers on the High Court to make various orders if it invokes its criminal revisionary jurisdiction in a proper case. In the oft-quoted Supreme Court case of *Liaw Kwai Wah & Anor v. PP* [1987] 1 CLJ 35; [1987] CLJ (Rep) 163, Abdul Hamid Omar CJ (Malaya), said as follows with respect to the duty of the High Court in relation to the criminal revisionary power over the subordinate courts:

> Basically, the duty lies with the High Court to see that the criminal law is properly administered by an inferior Court.
>
> The Judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior Court.

[18] Section 323 of the CPC not only refers to any "finding, sentence or order" that is amenable to revision. It also refers to "regularity of any proceedings of the subordinate courts". In the instant case, we are mindful that there is no final order or sentence that terminated the proceedings in the Sessions Court. However, learned DPP has complained that the Sessions

Court did not follow the law in respect of the manner of reception of evidence that is provided in s. 402B of the CPC and that this error affected the regularity of proceedings. Assuming that the law with respect to tendering of evidence was not heeded and impacted the regularity of the proceedings fundamentally, it is our view that s. 323 of the CPC can be properly invoked to correct the error. We shall examine this issue on the merits below. But first, we shall dispose of an important argument raised by counsel for the respondents.

[19] It was argued that the prosecution should wait for the conclusion of the Sessions Court trial and raise their complaint during the appeal stage. The point canvassed is that a ruling or order of subordinate court in the course of trial cannot be subject to the revisionary jurisdiction of the High Court before the trial is concluded. We respectfully disagree with this argument for the following reasons. Firstly, as we said earlier, s. 323 of the CPC envisages that the regularity of "any" proceedings can be the subject of a revision application. Since, "any" is used in respect of proceedings, we should think that it includes proceedings that have not terminated with a final outcome such as conviction or acquittal. Secondly, it is clearly spelt out in s. 35 of the CJA that the revisionary jurisdiction of the High Court can be invoked "at any stage" of the proceedings and directions can be given to the subordinate court "for further conduct" of the proceedings. Section 35 gives additional powers to the High Court in both civil and criminal matters with respect to supervisory and revisionary jurisdiction. It reads as follows:

> 35. General supervisory and revisionary jurisdiction of High Court
>
> (1) *In addition to the powers conferred on the High Court by this or any other written law,* the High Court shall have general supervisory and revisionary jurisdiction over all subordinate courts, and may in particular, but without prejudice to the generality of the foregoing provision, if it appears desirable in the interests of justice, either of its own motion or at the instance of any party or person interested, *at any stage in any matter or proceeding, whether civil or criminal,* in any subordinate court, call for the record thereof, and may remove the same into the High Court or *may give to the subordinate court such directions as to the further conduct of the same as justice may require.*
>
> (2) Upon the High Court calling for any record as aforesaid all proceedings in the subordinate court in the matter or proceeding in question shall be stayed pending further order of the High Court.
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> (emphasis added)

[20] The power conferred by s. 35 of the CJA is a wider power than the power conferred in s. 325 of the CPC as noted by Abdoolcader J (as he then was) in *Manokaran & Anor v. PP* [1978] CLJU 118; [1978] 1 LNS 118; [1979] 1 MLJ 262. In the premises, the argument that the interlocutory rulings or orders made in the course of trial are not amenable to the criminal

revisionary jurisdiction of the High Court is plainly without any merit. We shall now consider whether the complaint of the Public Prosecutor in seeking to revise the rulings of the Sessions Court pertaining to s. 402B witness statement of SP4 has any merit.

Whether High Court Erred In Not Allowing Revision

[21] At the risk of repetition, we point out again that the application of learned DPP to tender the witness statement of SP4 to substitute for the oral examination-in-chief was disallowed although the conditions of admission were satisfied. This is the reason that learned DPP could not proceed to ask SP4 to sign the witness statement. Furthermore, the learned Sessions Court Judge ordered that the witness statement would remain as a "guide". Before us, learned DPP has argued that the rulings of the Sessions Court were highly irregular and contravened the law. To appreciate this argument, we reproduce below the s. 402B of the CPC in its entirety. It reads as follows:

> (1) In any criminal proceedings, a written statement by any person shall, subject to the conditions contained in subsection (2), be admissible as evidence to the like extent as oral evidence to the like effect by that person. [(1) Am. Act A1521: s. 10]
>
> (2) A statement may be tendered in evidence under subsection (1) if -
>
> (a) the statement purports to be signed by the person who made it;
>
> (b) the statement contains a declaration by that person to the effect that it is true to the best of his knowledge and belief; and
>
> (c) a copy of the statement is served, by or on behalf of the party proposing to tender it, on each of the other parties to the proceedings not later than fourteen days before the commencement of the trial unless the parties otherwise agree.
>
> (3) Notwithstanding paragraph (2)(c), a party proposing to tender a statement in evidence under subsection (1) may not serve the statement to any other parties to the proceedings where the parties to the proceedings agree before or during the proceedings that the statement shall be so tendered.
>
> (4) If a statement proposed to be tendered in evidence under subsection (1) -
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> (a) is made by a person who cannot read, the statement shall be read and explained to him before he signs it and the statement shall be accompanied by a statutory declaration made under the Statutory Declarations Act 1960 [Act 13] by the person who so read the statement to the effect that it was so read and explained; or
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> (b) refers to any other document or object as an exhibit, the copy served on any other party to the proceedings under paragraph (2)(c) shall be accompanied by a copy of that document or by a photograph of

A the object and such information as may be necessary in order to enable the party on whom it is served to inspect the document or object, as the case may be, unless it is not expedient to do so.

(5) Notwithstanding that the written statement of a person may be admissible as evidence by virtue of this section -

B (a) the party by whom or on whose behalf a copy of the statement was served may call the person making the statement to give additional evidence which may include matters which are not contained in the statement; and

(b) the maker of the statement shall attend the trial for cross-
C examination and re-examination, if so requested.

(6) So much of any statement as is admitted in evidence by virtue of this section shall, unless the Court otherwise directs, be read aloud at the trial and where the Court so directs an account shall be given orally of so much of any statement as is not read aloud.

D (7) Any document or object referred to as an exhibit and identified in a written statement admitted in evidence under this section shall be treated as if it was produced as an exhibit and identified in the Court by the maker of the statement.

(8) A document required by this section to be served on any person may
E be served -

(a) by delivering the document to the person himself or to his advocate; or

(b) in the case of a corporation, by delivering the document to the secretary or other like officer of the corporation at its registered or
F principal office or by sending the document by registered post addressed to the secretary or other like officer of the corporation at that office.

[22] This provision was inserted into the CPC on 31 August 2016 and took effect on 1 March 2017. As we said earlier, the Federal Court in *Rossarin*
G *Nuekaew v. PP* (*supra*) observed that the purpose of s. 402B was to ensure speedy procedure in criminal trials. It must be noted that the s. 402B(1) says that a written statement "shall, subject to the conditions in sub-s. (2), be admissible as evidence to the like extent as oral evidence". Thus, in certain cases where the evidence of witness could be lengthy because of reference to
H numerous documents and transactions, much time could be saved if the prosecution avails the procedure in s. 402B.

[23] The conditions of admission of a witness statement which are stated in sub-s. (2) of s. 402B of the CPC are:

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(i) that the witness must sign the statement;

(ii) that the statement must contain a declaration that the contents are true to the best of his knowledge and belief;

(iii) that a copy of the witness statement must be served on parties to the proceedings 14 days before the trial unless otherwise agreed.

[24] The respondents or their counsel did not raise any objection to the witness statement in the Sessions Court on the grounds that the statutory conditions of admission enacted in sub-s. (2) were not satisfied. Thus, the question that arises is whether the Sessions Court had discretion to reject the witness statement although the conditions of admission were satisfied under s. 402B(2). It was pointed out that sub-s. (2) starts with the words "A statement may be tendered in evidence." Mr Amrick Singh Sandhu submitted that the word "may" gives discretion to the court to reject the statement. We are of the opinion that the "may" in sub-s. (2) only means that a statement can be admitted if it satisfies the three conditions stated in paras. (a), (b) and (c) and not otherwise. The governing provision in respect of the right to use a witness statement in a criminal trial is sub-s. (1). It clearly says that a statement shall be admissible in evidence to the like extent as oral evidence subject to the conditions in sub-s. (2).

[25] Since, the conditions of admission are not an issue in this case, in our view, the Sessions Court did not have any discretion to reject the witness statement of SP4. Furthermore, despite not admitting the witness statement, the Sessions Court made an order that the witness statement be used as a "guide". In the scheme of s. 402B of the CPC, a witness statement is to be used, if conditions of admission are met, *in lieu* of oral evidence-in-chief. There is no provision for it to be used as a "guide". Therefore, in our opinion, the ruling of the Sessions Court that the witness statement can be used as a "guide" contravened s. 402B and caused serious irregularity in the conduct of the trial. It could also potentially result in every single utterance of SP4 in his oral evidence being compared to the witness statement, which was ordered to be used as a so-called "guide" and become the subject of needless and endless cross-examination.

[26] We observe that s. 402B of the CPC is procedural in nature. It is to provide for speedy procedure as stated in *Rossarin Nuekaew v. PP* (*supra*). The written statement will stand as oral evidence under s. 402B. However, the substantive law of evidence has not been changed by s. 402B. Subsection (2) only provides for conditions of admission of the witness statement. Once admitted *in lieu* of oral evidence, very much like when a witness gives oral testimony, falsehoods or hearsay evidence that is contained in it need not be necessarily accepted as true. Hearsay evidence found in the written statement, unless it comes within the accepted exceptions, can be challenged

in the same manner that hearsay evidence found in oral testimony is challenged. However, given the fact that the conditions of admission in s. 402B(2) were satisfied, it would not do to knock out the entire statement at the initial stage when the statement is tendered *in lieu* of oral evidence.

[27] Thus, the Sessions Court should have merely recorded the objection of Mr Ashok Athimulan on leading questions and hearsay evidence. The objections should have been treated as a reservation of his client's right to cross-examine and challenge the witness on hearsay evidence in question and leading questions, if any. The witness statement should have been admitted as oral evidence as conditions of admission were satisfied. The witness statement should not have been ordered to be used as a "guide" as there is no provision for such a use in s. 402B.

[28] For the above reason, the request of the DPP to revise the rulings of the Sessions Court pertaining to the witness statement of SP4 fell within the ambit of s. 323 of the CPC. Despite invoking the power to revise and hear arguments, in our respectful view, the High Court fell into error by ruling that the Sessions Court had a discretion to reject the witness statement despite the fact that the prosecution complied with conditions for admission under s. 402B(2) of the CPC. The High Court also fell into error by maintaining the ruling of the Sessions Court that the witness statement be used as a "guide".

Conclusion

[29] For the above reasons, we allow the appeal of the Public Prosecutor and give the following directions to the Sessions Court with respect to the further conduct of the trial in accordance with the power granted under s. 35(1) of the CJA. SP4 is allowed to sign the witness statement upon taking the witness stand. The witness statement is to be admitted as oral examination-in-chief of the prosecution under s. 402B and the oral evidence already recorded is to stand as additional oral evidence. Counsel for the respondents are to have full liberty to examine the witness on all issues pertaining to hearsay evidence and leading questions (if any) contained in the witness statement.